IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF APPEALS

In re Application of:	Ole K. Nilssen
Entitled:	INVERTER CIRCUITS
Serial Number:	06/787,692
Filing Date:	10/15/85
Art Unit:	212
Examiner:	WILLIAM BEHA

I, OLE K. NILSSEN, HEREWITH CERTIFY THAT THE DATE OF DEPOSIT WITH THE U.S. POSTAL SERVICE OF THIS PAPER OR FEE IS: 6-21-88

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REPLY BRIEF

Commissioner of Patents and Trademarks
Washington, D.C. 20231

In response to Examiner's Answer to Applicant's previously submitted Appeal Brief, Applicant provides a Reply Brief in the form of the following comments and arguments.

AUTHORITIES

The authorities to be relied upon in this Reply Brief are:

(1) Natural Law (i.e., the Laws of Nature): verifiable reality, facts, truths, the Laws of Physics, the Laws of Mathematics/Reason/Logic, etc.;

(2) Common Law: esp. definitions/usage of words/language;

(3) Statutory Law: esp. paragraph 103 of the Patent Law;

(4) Case Law: esp. recent desicions by the CAFC.

Natural Law preceeds and is superior to both Common Law and Statutory Law. Case Law is inferior to both Common Law and Statutory Law, as well as to Natural Law.

Thus, Statutory Law and Common Law are valid only as long as they do not conflict with Natural Law; and Case Law is valid only as long as it does not conflict with Natural Law, Common Law and/or Statutory Law.

In particular, the main specific authority to be relied upon in this Reply Brief is paragraph 103 of the Patent Law as interpreted in accordance with Natural Law and Common Law.

More particularly, in accordance with Common Law (which, by unavoidable necessity, must include the English language), paragraph 103 is herein interpreted in accordance with the plain meaning of the words and phrases used therein -- plain meaning being herein defined as the meaning expressed by the words and phrases when interpreted in accordance with common definitions and usage of English words and phrases -- as for instance in accordance with Webster's New Collegiate Dictionary.

Paragraph 103 relates to obviousness and refers to subject matter which "would have been obvious ... to a person having ordinary skill in the art to which said subject matter pertains".

In particular, Applicant interprets the words "ordinary" and "skill" in accordance with common usage (i.e., Common Law); which is to say, in accordance with the way those words are commonly interpreted and understood, such as they are, for instance, interpreted in Webster's New Collegiate Dictionary.

It is noted that paragraph 103 says nothing about a "hypothetical" person as defined and used in Case Law, and as often referred-to by the PTO.

Clearly, if the framers of the Patent Law had meant the phrase "person having ordinary skill" in paragraph 103 to be defined in a special non-standard or unusual manner, they would have had the brains to so stipulate.

Moreover, in Case Law, the characteristics attributed to the so-called "hypothetical" person are such as to make this "hypothetical" person non-appropos as a definition for the term "person having ordinary skill" for the reason that a person having those characteristics would clearly be in conflict with Natural Law in that a person of such characteristics are not known to exist at all, much less to exist in the sense of being "ordinary".

Thus, the "person having ordinary skill" of paragraph 103 can not in any principled manner be defined to have the characteristics attributed to the so-called "hypothetical" person.

Hence, any Case Law -- such as for instance enunciated in Standard Oil Co. v. American Cyanamid Co., 774F.2d 448,227 USPQ 293 (Fed.Cir. 1985) -- that "authorizes" the use of the "hypothetical" person in determining obviousness under paragraph 103 is clearly wrong as a matter of superior law -- i.e., as matter of fact.

Moreover, for any person to render a reasonable judgement or opinion in respect to a certain matter or situation (legal or otherwise), he must have a correspondingly reasonable background and literacy (i.e., skill, knowledge, vocabulary) with respect to that certain matter or situation (i.e., he must have an appropriate basis of authority to be in the position to render such judgement or opinion). Thus, to render a meaningful (i.e., informed, legally relevant) opinion in regard to a given area of Law, a person must possess an appropriate background and literacy with respect to that area of Law.

In particular, if an examiner is to render an opinion with respect to Natural Law (as indeed he is whenever he makes a determination of patentability of an invention), it is imperative that he has the appropriate background/literacy relative to the particular area of Natural Law underlying that particular invention. Otherwise, his opinion could not in any principled manner be considered to be authoritative.

Thus, clearly, if an examiner's opinion is not authoritative (i.e., not based on an appropriate background and literacy) it constitutes an uninformed opinion and it can have no legal relevancy; which is to say: it can have no evidentiary weight.

COMMENTS IN RE EXAMINER'S ANSWER

Applicant assumes that, in order to reject as unpatentable a claimed invention pertaining to a particular subject matter, it is necessary for the Examiner to present evidence to the effect that the claimed invention would have been obvious to "a person having ordinary skill in the art pertinent to said subject matter".

On that assumption, Applicant traverses Examiner's rejection of claims 143 and 144 for the reason that Examiner has not provided evidence of obviousness.

Examiner presents Walker and Pintell as "evidence" of obviousness.

However, a prior art reference by itself does not constitute evidence. Rather, before such a prior art reference can constitute legally relevant evidence it must be interpreted by a person capable of effecting such interpretation in a competent manner.

In other words, a prior art reference can constitute evidence only when presented in combination with competent interpretation of the subject matter contained therein.

However, Examiner has not provided any evidence to the effect that the interpretation of Walker and Pintell upon which Examiner has relied constitutes competent interpretation. Thus, in fact, Examiner has not provided evidence in support of his holding of obviousness.

In instant situation, in order to provide competent interpretation of Walker and Pintell (as pertinent to the subject matter of the claimed invention), such interpretation clearly must be effected by a person possessing skill equivalent to that of "a person having ordinary skill in the art pertinent to said subject matter". Otherwise, that person's opinions with respect to such subject matter would have to be regarded as strictly uninformed opinions of no evidentiary weight.

Thus, for Walker and/or Pintell to constitute legally relevant evidence with respect to obviousness of the claimed invention, it is an absolute unavoidable necessity that the person interpreting Walker and/or Pintell possess the particular skill equivalent to that of "a person having ordinary skill in the art pertinent to said subject matter".

Clearly, Examiner has provided no evidence whatsoever with respect to the particular skill of the person having rendered the interpretation of Walker and Pintell upon which Examiner rejected the claimed invention as being obvious.

Apparently, Examiner has based his rejection upon his own interpretation and opinions with respect to the facts and circumstances associated with the applied references and how these facts and circumstances pertain to the subject matter of the claimed invention. Thus, is appears that Examiner has used his own interpretation and opinion as the basis for his finding of obviousness. Yet, Examiner has not provided any evidence of actually possessing the qualifications necessary to effect such interpretations and to render such opinions.

In other words, Examiner seems to have formed his opinions on the basis of his own prima facie interpretations relative to the particular art associated with the claimed invention and the applied references; however, not having provided any evidence to the effect that he possesses even ordinary skill in that particular art, Examiner's own prima facie interpretations can obviously not have any legal relevance in instant context.

CONCLUDING REMARKS

Clearly, without possessing ordinary skill in the art to which a given subject matter belongs, it is irrelevant in an evidentiary sense -- with respect to that given subject matter -- for a person to render opinions in respect to: i) what is obvious and/or what is unobvious to a person who does possess ordinary skill in that subject matter, ii) what is usual and what is unusual, iii) what is common practice and what is not, iv) what is safe practice and what is not, v) what is feasible to do and what is not, vi) what is practicable and what is not, vii) what works and what does not, viii) what kinds of circuits and/or elements are combinable and what kinds are not, ix) how circuits function and how they do not function, x) what may be regarded as prima facie so versus prima facie not so; xi) what constitutes a commonly prevailing attitude/ prejustice and what does not; xii) what is cost-effective and what is not; xiii) what are commonly accepted assumptions/premises and what are not; xiv) what constitutes a net advantage versus what does not constitute a net advantage; xv) what are commonly expected consequences of a given modification and/or combination; xvi) what words and phrases have particular meaning and how those words/phrases should be interpreted; xvii) etc.

Moreover, it is simply not possible to carry on a productive or even a meaningful discussion with such a person in respect to such subject matter. He simply does not possess the particular background, culture, vocabulary, pre-dispositions associated with having ordinary skill in that subject matter. He would simply lack the literacy associated with that particular subject matter; which means that he would not be capable of properly comprehending, interpreting, relating and/or combining facts and references related to that subject matter.

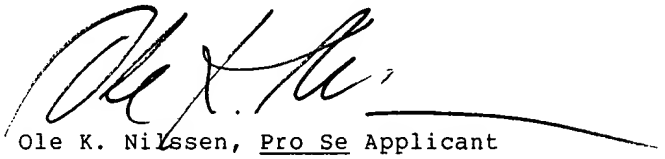
Lacking evidence to the contrary, Applicant takes the position that Examiner might not possess ordinary skill in the particular art pertinent to instant application -- where the words "ordinary" and "skill" are interpreted in accordance with their plain meaning, etc. Hence, absent such evidence:

(1) Examiner's prima facie impressions and/or opinions with respect to facts and circumstances of and/or within that particular art must be considered as uninformed opinions, therefore carrying no evidentiary weight;

(2) Examiner must be considered unqualified to render opinions (especially official opinions) relative to what is obvious and/or unobvious (to "a person having ordinary skill in the art"), how circuits work and how they do not work, which features are combinable and which are not, etc.; and

(3) Examiner must be considered unqualified to carry on a meaningful debate/discussion/argument relative to what would be obvious versus what would be unobvious, etc.

In conclusion -- partly because he has not supplied evidence to the effect that he himself possesses ordinary skill in the particular art pertinent to the claimed invention, yet in his conclusion has apparently relied upon his own opinions and interpretations with respect to facts and circumstances of and related to that particular art -- Examiner has not provided any kind of legally relevant evidence to the effect of showing that the claimed invention would have been obvious to a person having ordinary skill in the particular art pertinent thereto.



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